

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.631 of 2016

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1. Nageshwar Singh Son of late Ram Swaroop singh
2. Kanti Devi Wife of Nageshwar singh Both Resident of Village- Mahthi
PS UJiyarpur Distrc Samastipur.

.... Petitioner/s

Versus

1. The State of Bihar
2. Jaimala Devi Wife of late kapileshwar Singh Resident of Village-
Mahthi, PS Ujjiarpur District Samastipur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dr. Anshuman

For the Respondent/s : Ms. Meena Singh

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI

SHARAN SINGH

ORAL ORDER

5 13-02-2017 Heard learned Counsel for the petitioners and
learned Additional Public prosecutor representing the State.

The provision, under Section 239 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code"), is an important protection available to a person made accused in a criminal case, to claim that the accusation against him are groundless and on that ground, charge should not be framed against him. The said provision casts upon the Magistrate an obligation for consideration of the police report and documents sent with it under Section 173 of the Code, after giving the prosecution and the accused an opportunity of being heard,



on a plea of discharge being taken by an accused.

The words "*considering the police report and documents sent with it under Section 173 of the Code*" and provision for allowing the prosecution and the accused an opportunity of being heard prior to framing of the charge indicates that any order passed in exercise of power conferred under Section 239 of the Code, must show application of judicial mind.

In the present case, the petitioners have challenged the order, dated 17.06.2016, passed by learned Judicial Magistrate, 1st Class, Darsingsarai, in connection with Ujiyarpur Police Station Case No. 122 of 2013, arising out of Complaint Case No. 248 of 2013, whereby he has rejected a petition filed on behalf of the petitioners for their discharge under Section 239 of the Code.

The petitioners are accused of commission of offence punishable under Sections 341, 323, 379, 354, 420, 467, 504, 506 read with Section 34 of the Indian Penal Code, in the said First Information Report, which is based on a complaint filed by the Opposite Party No. 2. The police submitted final report on 17.06.2013 with a finding that the case was basically of civil dispute between the parties. Learned Magistrate, however, had taken cognizance by an order, dated 11.02.2014, of the aforesaid



offence punishable under Sections 341, 323, 379, 354, 420, 467, 504, 506 read with Section 34 of the Indian Penal Code.

The petitioners filed an application for discharge taking specific plea that there was absolutely no material on record, including there in the case diary, sufficient for putting these petitioner on trial after framing of charge.

The said application has been dismissed by the impugned order, dated 17.06.2016. There is absolutely no discussion in the impugned order as to why the application of the petitioners deserved to be dismissed and what materials were there in the case diary, which were sufficient for framing of charge against the petitioners.

Following is the only discussion made in the impugned order, dated 17.06.2016.

“सुना तथा अभिलेख का अवलोकन किया।

केस डायरी में अभियुक्तों के विरुद्ध आरोप के सृजन हेतु पर्याप्त साक्ष्य उपलब्ध है।”

The impugned order is cryptic, non-speaking and does not disclose application of mind. The order, therefore, cannot be sustained. The order, dated 17.06.2016, passed in G. R. No. 430 of 2013, is accordingly set aside.



The Judicial Magistrate, 1st Class, Dalsingsarai, is directed to pass an order afresh on petitioner's application filed under Section 239 of the Code within a period of one month from the date of communication of the present order.

This application stands allowed.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

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